IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 19587 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ? **1 to 5 NO**

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THAKORBHAI MAGANBHAI DESAI - Petitioner(s)
Versus
THE STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR MP PRAJAPATI for Petitioner(s) : 1,
MR PATHIK ACHARYA ASSTT GOVERNMENT PLEADER for Respondent(s) : 1-2

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 23/10/2007

ORAL JUDGMENT :

1. Rule. Learned A.G.P. Mr.Acharya waives service. Despite issuance and service of notice under earlier order dated 8.10.2007, the respondents have chosen not to file any affidavit-in-reply.

2. According to the petitioner, market value of the property in question was determined under the provisions of sub-section (1) of section 32-A of the Bombay Stamps Act, 1958 (for short, "the Act") and communicated to the petitioner by letter and notice dated 23.3.2000. There is no evidence of service of that communication. Thereafter, the petitioner made Reference Application No.1 of 2004 on 11.2.2004 under the provisions of section 53 of the Act paying Rs.15,170/- on 11.2.2004 as 25% of the deficit stamp duty. It was stated in the application that original order dated 23.3.2000 was an ex parte order and, upon receipt of information of that order, the reference application was made. Pursuant to that reference application, impugned order dated 19.7.2006 was issued on the basis that the so-called appeal of the petitioner having been filed under section 32-B of the Act after the period of limitation, it was not entertained.

3. It was fairly conceded by learned A.G.P. Mr.Acharya that Reference Application No.1 of 2004 made by the petitioner after payment of 25% of the deficit duty was required to be heard and decided on merits in accordance with law and

impugned order dated 19.7.2006 rejecting the appeal under section 32-B of the Act was obviously a product of misunderstanding or total non-application of mind.

4. Under the above circumstances, it was jointly requested that the impugned order or final order dated 19.7.2006 may be quashed with the direction to the Chief Controlling Revenue Authority to entertain and decide Reference Application No.1 of 2004 on merits. Accordingly, the petition is allowed with the direction that impugned order dated 19.7.2006 shall stand quashed and Reference Application No.1 of 2004 made by the petitioner shall be heard and disposed on merits in accordance with law after affording to the petitioner an opportunity of being heard. Rule is made absolute accordingly with no order as to costs.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)